

AGENDA — October 31, 2000 Business Taxes Committee Meeting
Proposed New Regulations, Amendments, and Deletions of the Cigarette and Tobacco Products Tax Law

Action 1 — Consent	
Cigarette and Tobacco Products Tax Regulations 4018 thru 4098.	Adopt proposed amendments, deletions, and new regulations as agreed upon by industry and staff. (See Exhibit 1)
Action 2 — Authorization to Publish.	<p>Direct the publication of the proposed amendments, deletions, and new regulations as adopted in the above actions.</p> <p>Operative Date: None Implementation: Upon OAL approval</p>

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Issue Paper Number 00-039



BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and
Administrative Efficiency
Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Proposed New Regulations, Amendments, and Deletions of the Cigarette and Tobacco Products Tax Law.

I. Issue

Should the Board amend twenty-three current regulations, adopt two new regulations, and delete four existing regulations (Exhibit 1) to clarify the application of the Cigarette and Tobacco Products Tax Law by (1) adding references to tobacco products, (2) updating the regulations to reflect statutory changes and Board and industry practice; (3) adding records and relief from liability regulations consistent with Sales and Use Tax regulations; and (4) making other changes for clarity and consistency.

II. Staff Recommendation

Staff recommends that the Board authorize publication of the proposed amendments to the existing Cigarette and Tobacco Products Tax Law regulations and proposed new regulations. Staff also recommends that the Board authorize the proposed deletions. The amendments to the listed regulations, deletions of existing regulations, and proposed new regulations are considered to be changes that have no cost and revenue impact. Staff met with interested parties and worked on the proposed changes to all the regulations with emphasis on Regulations 4022, 4034, 4058, and 4081.

III. Other Alternative(s) Considered

For the proposed changes involving adding references to tobacco products and other changes for clarity and consistency no alternatives were considered. However, for the proposed changes to Regulation 4022, 4034, 4058, and 4081 a discussion of the alternatives considered is set forth below (V. Staff Recommendation) under the respective regulations.

IV. Background

A cigarette tax was imposed in 1959 on distributors of cigarettes for the distribution of cigarettes. Effective January 1, 1989 (Proposition 99), a surtax was imposed on cigarettes and a new tax was added on distributions of tobacco products. Effective January 1, 1999 (Proposition 10), an additional tax was imposed on distributions of both cigarettes and tobacco products. Stats. 1989, Ch. 634, in effect September 21, 1989, added tobacco products provisions to the Cigarette Tax Law and renamed the law, Cigarette and Tobacco Products Tax Law. Similar revisions to the corresponding regulations have yet to be made. The proposed amendments revise current regulations to add references to tobacco products and to update the regulations to reflect current statutes and current Board and Industry practice. In addition, two new regulations are proposed to describe the record keeping requirements for cigarette and tobacco products distributors and the circumstances under which relief from liability will be granted. These proposed new regulations mirror existing Sales and Use Tax regulations.

V. Staff Recommendation

The staff recommends that the Board authorize publication of the attached amendments, deletions, and proposed new regulations.

A. Description of the Staff Recommendation

1. Regulation 4018. Amount of Security.

This regulation addresses the amount of bond required for distributors of cigarettes and tobacco products. In accordance with Section 30141 of the Cigarette and Tobacco Products Tax Law, the proposed amendment replaces the word “bond” with the less restrictive term “security”.

The amendment also adds a ceiling for the amount of required security consistent with Revenue and Taxation Code Section 30142.

2. Regulation 4021. Opening Inventory.

This regulation describes the filing requirements for opening inventory for distributors and wholesalers. The proposed amendment combines the regulation into one paragraph. There is no substantive change.

3. Regulation 4022. Inventories of Cigarettes.

This regulation describes the required inventory counts reported by distributors and wholesalers. The proposed amendment introduces cycle count and a perpetual inventory system as requested by industry, and separately outlines the physical inventory requirements for distributors and wholesalers who use the above inventory systems and ones who do not.

This regulation was the topic of discussion at both of the interested parties meetings. Staff originally proposed that physical inventories of cigarettes be taken four times a year on the last day of each quarter of a calendar year. Industry stated that if the requirement for a physical

inventory fell on other than the weekend, there could not be compliance without closing their operations. Industry proposed that a perpetual inventory system and/or cycle count system be used for the reporting requirement. Staff agreed to incorporate both systems and still require a physical inventory once every calendar year. Staff also provided an alternative for taxpayers that do not have a perpetual inventory system. The proposed amendment is a result of discussion and agreement between staff and industry.

4. Regulation 4023. Inventories of Stamp and Meter Units.

This regulation describes the record keeping requirements by distributors for inventory of stamps and meter units. It also describes the requirements for taking physical inventory of unaffixed and affixed tax stamps and meter units on hand at the end of each month. The proposed amendment makes a minor technical change in order to use gender neutral language.

5. Regulation 4026. Records.

This regulation specifies the records cigarette distributors should keep. The proposed amendment adds the record keeping requirements for cigarette wholesalers and tobacco product distributors and wholesalers. The proposed amendment also correctly updates the title of the regulation from “Distributor’s Records” to “Records”, and adds proposed requirements consistent with Sales and Use Tax Regulation 1698.

6. Regulation 4027. Manufacturer’s Records and Monthly Report.

This regulation specifies what records a cigarette manufacturer must keep and outlines the reporting requirements. The proposed amendment adds tobacco product manufacturer to the regulation and makes minor technical changes.

7. Regulation 4028. Period for Which Records to be Kept.

Staff recommends that this regulation be deleted. The record keeping requirements for distributors and wholesalers are addressed in Regulation 4026.

8. Regulation 4034. Report of Shipments to Consumer.

This regulation requires each person who sells or solicits orders for cigarettes, the use or consumption of which is subject to the tax, to file reports or returns with the board on or before the 25th day of the month following the calendar month in which the cigarettes were delivered in this state. The proposed amendment to the regulation adds the same requirements for tobacco products.

Additionally, this regulation describes the requirements to be followed by each person engaged in business in this state who makes gifts of untaxed cigarettes as samples by means of shipment from an out-of-state point directly to a donee in this state. The proposed amendment also incorporates existing restrictions on sample cigarettes and tobacco products in this state.

This regulation was addressed at the second interested party meeting. Staff, at the request of a Board Member's staff, introduced the Master Settlement Agreements (MSA) in reference to making gifts (samples) of untaxed cigarettes or tobacco products. Industry objected to referencing the MSA for the following reasons: (1) California Health and Safety Code §118950 addresses samples and is more restrictive than the MSA; (2) the reference was unnecessary; and (3) the reference could cause confusion to distributors who may question whether the terms of the MSA apply to them.

The proposed amendment was changed to clearly provide that the terms of the MSA apply only to the signatories of those Agreements and incorporates existing state law on "samples". The proposed amendment is a result of discussions and agreement between staff and industry.

9. Regulation 4041. Common Carrier Delivery Reports.

This regulation requires every common carrier making delivery of cigarettes to a consignee in this state, the shipment of which originated outside this state, to report to the Board information concerning the shipment. The proposed amendment adds the same requirements for deliveries of tobacco products.

10. Regulation 4047. Transfer of Stamps.

This regulation specifies that a distributor shall not sell, transfer, or exchange with another distributor or any other person stamps issued by the Board and/or packages of cigarettes accompanied by unaffixed stamps. The proposed amendment is less restrictive by adding language consistent with Section 30164 of the Revenue and Taxation Code, which provides that unaffixed stamps may be sold, exchanged or transferred to another distributor or any other person with prior written approval of the board.

11. Regulation 4055. Where Purchased; Distributor's Discount.

The regulation provides that cigarettes tax stamps and meter settings may be purchased by licensed distributors at designated branch offices of banks located throughout the state. The proposed amendment removes the reference to bank location, and replaces it with "locations designated by the Board."

12. Regulation 4056. Units of Sale; Minimum Sales.

This regulation specifies the type of cigarette stamps provided by the Board; heat or water applied, and denominated value of each stamp based on the tax rate. It also specifies the minimum transaction amount for meter settings and the denominated value of each meter impression. The proposed amendment updates the value of the tax stamps to reflect the current tax rate and deletes references to water applied tax stamps and meter register settings that are no longer available for purchase.

13. Regulation 4057. Cash Sales of Tax Stamps or Meter Settings.

This regulation describes the process whereby cigarette distributors may purchase tax stamps or meter register settings. The proposed amendment corrects the gender specific language, updates the language of the regulation by replacing “bank branch office” with “designated location,” and also deletes the word “indicia” and replaces it with “stamps or meter register settings”.

14. Regulation 4058. Application for Credit Purchases.

This regulation describes the process whereby cigarette distributors may request to purchase cigarette tax stamps or meter settings on a deferred payment basis. The regulation specifies that the board shall review the request, set the amount of deferred payment purchases, specify the amount of required security and notify the distributor by mail on Form BT-353. Form BT-353 is no longer being used in the deferred payment request/notification process. The proposed amendment deletes the reference to Form BT-353 and makes other technical changes.

The regulation was updated to reflect consistency with Revenue and Taxation Code §30142 which states that the board shall require a security equal to not less than 70 percent and no more than twice the amount of deferred payment for stamps.

Also, the proposed amendment increases the maximum amount of tax stamps or meter register settings a distributor may defer payment on from “one and one half times the estimated average monthly tax liability” to “not to exceed twice the estimated average monthly tax liability”. Interested parties requested this change in order to maximize their use of the deferred payment option. Staff considered the proposal and agreed to incorporate the change because the security the board can require the distributor to post (§30142) can be increased to up to twice the amount of the estimated average monthly tax liability.

15. Regulation 4059. Authorization for Credit Purchases.

This regulation covers payment purchases of cigarette tax stamps. The proposed amendment replaces references to “bank branch office” with more general language and makes other minor technical changes.

16. Regulation 4060. Payment for Credit Purchases.

This regulation specifies where and to whom payment for all deferred payment purchases of stamps or meter register setting is made. The proposed amendment makes minor technical changes by replacing “tax indicia” with “stamps or meter register settings” and “bank branch office” with “designated location”.

17. Regulation 4062. Destroyed Stamps and Meters.

This regulation outlines the requirements for refund or credit to be made to a distributor for the denominated value of any stamps, or unused meter register setting, when the stamps or the meter have been destroyed. The proposed amendment corrects a spelling error and updates language by replacing “tax indicia” with “stamps or meter impressions”.

18. Regulation 4063. Destroyed Cigarettes.

This regulation outlines the requirements for a refund or credit to be made to a distributor for the denominated value of stamps or meter impressions affixed to packages of cigarettes, which are destroyed prior to distribution. The proposed amendment updates language by replacing “tax indicia” with “stamps or meter impressions”.

19. Regulation 4063.5. Exported Tax Paid Tobacco Products.

This proposed regulation establishes, in accordance with Section 30176.1 of the Cigarette and Tobacco Products Tax Law, the procedure for a refund or credit to a distributor of the tax paid on tobacco products that are exported.

20. Regulation 4064. Claim Forms.

This regulation specifies the requirements for claim for refund forms. The proposed amendment adds a reference to proposed Regulation 4063.5.

21. Regulation 4065. Unusable Cigarettes.

This regulation describes the requirements whereby a distributor may request a refund or credit of the denominated value of stamps or meter impressions affixed to packages of cigarettes which have become unfit for use before or after distribution. The proposed amendment updates language by replacing “tax indicia” with “stamps or meter impressions”.

22. Regulation 4067. Provisions Limited to Distributor.

This regulation provides that refunds and credits apply only to distributors. Staff recommends that this regulation be deleted because its provisions are covered in Regulation 4061 and 4065.

23. Regulation 4079. In Bond Federal Tax Free Cigarettes.

This regulation deals with in bond federal tax-free cigarettes. The regulation is in conflict with current law (Section 30102.5 of the Revenue and Taxation Code) and therefore, should be deleted.

24. Regulation 4080. Interstate and Foreign Commerce.

This regulation outlines the criteria for the interstate commerce exemption on sales of cigarettes. The proposed amendment adds tobacco products to the regulation.

25. Regulation 4081. Sample Cigarettes.

This regulation specifies that the giving away in this state of untaxed cigarettes as samples is a taxable distribution. It also outlines the labeling requirement for such samples. The proposed amendment adds tobacco products to the regulation, outlines the labeling requirement for tobacco products, and adds “tobacco products” to the title. The proposed amendment also incorporates existing restrictions on sample cigarettes and tobacco products in this state.

This regulation was addressed at the second interested party meeting. Staff, at the request of a Board Member’s staff, introduced the Master Settlement Agreements (MSA) in reference to making gifts (samples) of untaxed cigarettes or tobacco products. Industry objected to referencing the MSA for the following reasons: (1) California Health and Safety Code §118950 addresses samples and is more restrictive than the MSA; (2) the reference was unnecessary; and (3) the reference could cause confusion to distributors who may question whether the terms of the MSA apply to them. Industry also objected that manufacturers had to notify the board in writing in advance of the volume of the sample. The requirement that the volume of the sample be reported in advance was removed by staff since manufacturers reports, which are filed with the return show the actual amount of the distribution.

The proposed amendment was also changed to clearly provide that the terms of the MSA apply only to the signatories of the agreements, and incorporates existing law on “samples”. The proposed amendment is a result of discussions and agreement between staff and industry.

26. Regulation 4082. Cigarettes for Hospitalized Veterans.

This regulation specifies that no tax is due on cigarettes given away to veterans receiving care at certain specified facilities and under specified circumstances. The authority for this regulation, Section 30102.5 of the Revenue and Taxation Code has been repealed. Therefore, staff recommends that this regulation be deleted.

27. Regulation 4091. Payment by Consumer.

This regulation outlines the consumer exemption limitation for cigarettes personally transported into this state and specifies that any quantity of cigarettes shipped from out-of-state to a consumer in this state are subject to tax. Also, the regulation describes how the tax must be paid and specifies that consumers will be held liable unless a receipt for the payment of tax is obtained. The proposed amendment reorganizes the regulation for purposes of clarity and adds references to tobacco products.

28. Regulation 4092. Receipts for Tax Paid To Distributors.

This regulation outlines the items required to be included as part of the receipt the distributor gives to each purchaser for tax collected under Revenue and Taxation Section 30108. The proposed amendment adds tobacco products to the regulation.

29. Regulation 4098. Relief from Liability.

This regulation describes the conditions that must be met in order for a person to be relieved from the liability for the payment of cigarette and tobacco product taxes, including any penalties, and interest added to those taxes. This is a new regulation consistent with Sales and Use Tax Regulation 1705.

B. Pros of the Staff Recommendation

Adopting the proposed regulation amendments, deletions, and proposed new regulations will bring about administrative conformity between the regulations and current statutes and provide greater clarity for members of the public.

C. Cons of the Staff Recommendation

None noted.

D. Statutory or Regulatory Change

Adoption of the proposed amendments to regulations, deletions, and new regulations will not require statutory changes. Section 30451 of the Revenue and Taxation Code authorizes the Board to provide the rules and regulations needed to administer and enforce Part 13, Division 2 of the Revenue and Taxation Code.

E. Administrative Impact

It is not anticipated that the board will incur any additional workload as a result of the adoption of the proposed amendments, deletions, and new regulation.

F. Fiscal Impact

1. Cost Impact

Cost impact is minimal and absorbable.

2. Revenue Impact

No revenue impact.

G. Taxpayer/Customer Impact

Amending the proposed regulations will provide clarification to the public as to the administration of the Cigarette and Tobacco Products Tax Law. In addition, the proposed regulations will describe the record keeping requirements for cigarette and tobacco products distributors and wholesalers, the

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circumstances under which relief from liability will be granted, and outline the requirements for filing for a refund or credit for the tax paid on exported tax-paid tobacco products. These proposed new regulations are consistent with Sales and Use Tax Regulations.

H. Critical Time Frames

This issue is not critical, but to prevent the underreporting of the tax due to lack of references to tobacco products, and misunderstandings by the taxpayers and consumers, adoption of the amendments to, deletions, and the new regulations should be addressed as expeditiously as possible.

VI. Alternative

No other alternatives were considered with respect to the proposed changes adding tobacco products or changes for clarity and consistency. As discussed previously, alternatives were discussed with interested parties with respect to Regulations 4022, 4034, 4058, and 4081. The proposed changes to these Regulations were agreed to by staff and interested parties.

Prepared by: Excise Taxes Division

Current as of: October 19, 2000

Regulation 4018. AMOUNT OF SECURITY~~BOND~~.

Reference: Sections 30142, 30167, Revenue and Taxation Code.

(a) The amount of ~~bond~~security shall be fixed by the board. The board may increase or reduce the amount of ~~bond~~security at any time, but in no event shall the amount of ~~bond~~security be less than \$1,000. ~~Where it appears that a distributor will be engaged in particular types of transactions which do not require the affixing of tax stamps or meter impressions, the amount of bond may be increased by an amount equal to twice the distributor's estimated monthly tax liability with respect to such types of transactions.~~

(b) When a distributor is authorized to purchase stamps or meter register settings on the deferred payment basis, ~~pursuant to the Cigarette Tax Law, his bond~~ the security shall be fixed in an amount ~~equal to~~ no less than 70 percent of the amount, and no more than twice the amount, as fixed by the board, of deferred payment purchases which the distributor may have unpaid at any time.

History: Adopted June 24, 1959.
Amended September 13, 1961.
Amended January 12, 1968.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4021. OPENING INVENTORY.

Reference: Sections 30182, 30453, 30454, Revenue and Taxation Code.

~~(a)~~ Every distributor or wholesaler engaged in the sale of cigarettes shall take a physical inventory of cigarettes on hand as of the time ~~he~~ the distributor or wholesaler first engages in the sale of cigarettes as a distributor or wholesaler. A report of a first physical inventory taken shall be filed with the board on or before the 25th day of the calendar month following the calendar month in which the distributor or wholesaler first engages in the sale of cigarettes as a distributor or wholesaler.

~~(b)~~ Every wholesaler engaged in the sale of cigarettes as a wholesaler on November 13, 1968, shall take a physical inventory of cigarettes on hand at the beginning of business on that day. A report of the first physical inventory taken shall be filed with the board on or before the 26th day of December 1968. Every wholesaler who first engages in the sale of cigarettes after November 13, 1968, shall take a physical inventory of cigarettes on hand as of the time he first engages in the sale of cigarettes as a wholesaler. A report of a first physical inventory shall be filed with the board on or before the 25th day of the calendar month following the calendar month in which the wholesaler first engages in the sale of cigarettes as a wholesaler.

History: Adopted June 24, 1959.

Amended October 10, 1968, effective November 13, 1968.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4022. INVENTORIES OF CIGARETTES.

Reference: Sections 30182, 30453, 30454, Revenue and Taxation Code.

~~Every distributor and wholesaler engaged in the sale of cigarettes shall furnish with his monthly report to the board a monthly statement of the cigarettes on hand at the end of the month covered by the report. Physical inventories of cigarettes on hand shall be taken not less often than at three-month intervals and the statements shall be prepared from the physical inventories when physical inventories are taken. The statement of cigarettes on hand shall show the number of cigarettes on hand contained in packages to which tax stamps or meter impressions are affixed and the number not bearing tax stamps or meter impressions.~~

Every distributor and wholesaler engaged in the sale of cigarettes shall furnish with his or her monthly report to the board a statement of the cigarettes on hand at the end of the month covered by the report, showing the number of cigarettes on hand contained in packages to which tax stamps or meter impressions are affixed and the number not bearing tax stamps or meter impressions. The statement shall be furnished in one of the following manners:

(a) If the distributor or wholesaler has a cycle count inventory system and perpetual inventory system in place, the monthly statement shall be based on the perpetual inventory report run on the last business day of the month for which the distributor's or wholesaler's report is filed. However, at least once every calendar year, the monthly statement shall be based on a physical inventory of cigarettes on hand on the last business day of the month for which the distributor's or wholesaler's report is filed.

A "cycle count inventory system" is a system that provides evidence that all cigarettes are counted on a regular basis, with each item being counted at least once every three-month period.

A "perpetual inventory system" is a system in which inventory records are maintained and updated continuously as items are purchased or sold.

(b) If the distributor or wholesaler does not have a cycle count inventory system and perpetual inventory system in place, the monthly statement shall be based on the inventory on hand at the end of the month covered by the report. However, at least once every six months, the monthly statement shall be based on a physical inventory of cigarettes on hand performed within the last five days of the month for which the distributor's or wholesaler's report is filed.

History: Adopted June 24, 1959.

Amended October 10, 1968, effective November 13, 1968.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4023. INVENTORIES OF STAMPS AND METER UNITS.

Reference: Sections 30182, 30453, 30454, Revenue and Taxation Code.

Every distributor engaged in the sale of cigarettes shall keep daily records of the number of tax stamps and meter units used in ~~his~~the distributor's affixing operations and shall record daily the meter register readings of the meters employed. ~~He~~The distributor shall take physical inventories of unused tax stamps on hand as of the end of each month and shall furnish, with ~~his~~their monthly report to the board, a statement of all unaffixed and affixed tax stamps and meter units on hand at the end of the month covered by the report.

History: Adopted June 24, 1959.

Amended September 13, 1961.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4026. DISTRIBUTOR'S RECORDS.

Reference: Section 30453, 30454, Revenue and Taxation Code.

~~Every distributor engaged in the sale of cigarettes shall keep complete and accurate records of all transactions in cigarettes and such other records, including copies of all reports to the board, as may be required by the board. All records shall be kept and maintained at the licensed premises of the distributor in this State, unless written permission has been granted by the board to keep and maintain the records at some other location. Such records shall be available at all times for inspection by employees of the board.~~

(a) DEFINITIONS.

(1) "Database Management System"—a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic data interchange" or EDI technology—the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) "Hardcopy" --any document, record, report, or other maintained in a paper format.

(4) "Machine-sensible record"---a collection of related information in an electronic format. Machine –sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(5) "Distributor"---includes:

(a) Every person who, after 4 o'clock a.m. on July 1, 1959, and within the meaning of the term "distribution" as defined in the Revenue and Taxation Code, distributes cigarettes.

(b) Every person who, on or after 12:01 a.m. on January 1, 1989, and within the meaning of the term "distribution" as defined in the Revenue and Taxation Code, distributes tobacco products.

(c) Every person who sells or accepts orders for cigarettes or tobacco products which are to be transported from a point outside this State to a consumer within this State.

(6) "Wholesaler" includes:

(a) Any person, other than a licensed distributor, who engages in this state in making sales for resale of cigarettes that are contained in packages to which are affixed stamps or meter impressions.

(b) Any person, other than a licensed distributor, who engages in this state in making sales for resale of tobacco products on which the tax imposed in Section 30123 has been paid.

(b) GENERAL.

(1) A distributor or wholesaler shall maintain and make available for examination on request by the board or its authorized representative, all records necessary to determine the correct tax liability under the Cigarette and Tobacco Products Tax Law and all records necessary for the proper completion of the return. Such records include but are not limited to:

- (A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.
- (B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.
- (C) Schedules or working papers used in connection with the preparation of tax returns.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 30453 and 30454.

(c) MACHINE SENSIBLE RECORDS.

(1) General.

- (A) Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the board upon request. A distributor or wholesaler has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.
- (B) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g. Extended Binary Coded Decimal Interchange Core (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.
- (C) Distributors and wholesalers are not required to construct machine-sensible records other than those created in the ordinary course of business. A distributor or wholesaler who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

(2) Electronic Data Interchange Requirements.

- (A) Where a distributor or wholesaler uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the

- taxpayer maintains a method which allows the board to interpret the coded information.
- (B)** The distributor or wholesaler may capture the information necessary to satisfy subdivision (c) (2) (A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity of the retained records can be established. For example a distributor or wholesaler, using EDI technology receives electronic invoices from its suppliers. The distributor or wholesaler decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the distributor or wholesaler must also retain other records, such as its vendor master file and product code description lists, and make them available to the board. In this example, the distributor or wholesaler need not retain its EDI transaction for tax purposes.
- (3)** Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.
- (4)** Business Process Information.
- (A)** Upon request of the board, the distributor or wholesaler shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the distributor or wholesaler and the measures employed to ensure the integrity of the records.
- (B)** The distributor or wholesaler shall be capable of demonstrating:
1. the functions being performed as they relate to the flow of data through the system;
 2. the internal controls used to ensure accurate and reliable processing, and;
 3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.
- (C)** The following specific documentation is required for machine-sensible records retained pursuant to this regulation:
1. record formats or layouts;
 2. field definitions (including the meaning of all codes used to represent information);
 3. file descriptions (e.g., data set name); and
 4. detailed charts of accounts and account descriptions.
- (d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.**

(1) The distributor's or wholesaler's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c) (1) (B).

(2) The board recommends but does not require that distributors and wholesalers refer to the National Archives and Record Administration's' (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

(e) ACCESS TO MACHINE-SENSIBLE RECORDS.

(1) The manner in which the board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a distributor's or wholesaler's facts and circumstances through consultation with them.

(2) Such access will be provided in one or more the following manners:

(A) The distributor or wholesaler may arrange to provide the board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The distributor or wholesaler may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The distributor or wholesaler may convert the machine-sensible records to a standard records format specified by the board, including copies of files, on a magnetic medium that is agreed to by the board.

(D) The distributor or wholesaler and the board may agree on other means of providing access to the machine-sensible records.

(f) RESPONSIBILITY AND DISCRETIONARY AUTHORITY.

(1) In conjunction with meeting the requirements of subdivision (c), a distributor or wholesaler may create files solely for the use of the board. For example, if a data base management system is used, it is consistent with this regulation for the distributor or wholesaler to create and retain a file that contains the transaction-level detail from the date base management system and that meets the requirements of subdivision (c). The distributor or wholesaler should document the process that created the separate file to show the relationship between that file and the original records.

(2) A distributor or wholesaler may contact with a third party to provide custodial or management services of the records. Such a contract shall not relieve them of their responsibilities under this regulation

(g) HARDCOPY RECORDS.

(1) Except as specifically provided, a distributor or wholesaler is not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the distributor or wholesaler in accordance with this regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(h) ALTERNATIVE STORAGE MEDIA.

(1) For purposes of storage and retention, a distributor or wholesaler may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provided the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, and credit memoranda.

(2) Storage-only imaging media such as microfilm or microfiche systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision(i).

(C) Upon request by the board, a distributor or wholesaler must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) RECORD RETENTION-TIME PERIOD.

All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

(j) RECORD RETENTION LIMITATION AGREEMENTS.

(1) The board has the authority to enter into or revoke a record retention limitation agreement with the distributor or wholesaler to modify or waive any of the specific requirements in this regulation. A distributor's or wholesaler's request for an agreement must specify which records (if any) they propose not to retain and provide the reasons for not retaining such records, as well as, proposing any other terms of the requested agreement. The distributor or wholesaler shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a distributor or wholesaler seeks to limit its retention of machine-sensible records, they may request a record retention limitation agreement, which shall:

1. document understandings reached with the board, which may include, but is not limited to any one or more of the following issues:

- a. the conversion of files created on an obsolete computer system;
- b. restoration of lost or damaged files and the actions to be taken;
- c. use of distributor or wholesaler computer resources, and

2. specifically identify which of the distributor's or wholesaler's records the board determines are not necessary for retention and which they may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The board shall consider a request for a record retention limitation agreement and notify the distributor or wholesaler of the actions to be taken.

(C) The board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the distributor or wholesaler of the responsibility to keep adequate and complete records supporting entries shown on any tax information return.

(2) A distributor's and wholesaler's record retention practices shall be subject to evaluation by the board when a record retention limitation agreement exists. The evaluation may include a review of the distributor's or wholesaler's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The board shall notify the distributor or wholesaler of the results of any evaluation, including acceptance or disapproval of any proposals made by them (e.g., to discard certain records) or any changes considered necessary to bring the distributor's or wholesaler's practices into compliance with this regulation.

(B) Since the evaluation of a distributor's or wholesaler's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is

not an “examination of records” under section 30454 of the Revenue and Taxation Code.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the distributor and wholesaler in accordance with this regulation until a new evaluation is conducted by the board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the distributor’s or wholesaler’s signing of a record retention limitation agreement, acquires or is acquired by the distributor or wholesaler. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The state shall notify the distributor or wholesaler of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

(k) FAILURE TO MAINTAIN RECORDS.

Failure to maintain and keep complete and accurate records may be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

History: Adopted June 24, 1959.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4027. MANUFACTURER'S RECORDS AND MONTHLY REPORT.

Reference: Sections 30453, 30454, Revenue and Taxation Code.

(a) Every cigarette manufacturer or tobacco products manufacturer dealing in, transporting, storing or warehousing cigarettes or tobacco products in this state or otherwise engaged in business in this state as a distributor shall keep and maintain at his place of business in this state, or at the warehouses or storage places from which ~~he releases or delivers~~ cigarettes or tobacco products are released or delivered by the manufacturer, a record of all releases or deliveries of cigarettes or tobacco products from each storage place or warehouse in this state and shall keep and maintain either within the state or at ~~his~~ the manufacturer's home office a record of all ~~his~~ the manufacturer's shipments of cigarettes or tobacco products from points outside this state to points within this state. Such records shall be made available at any time during normal business hours to the board or its authorized representatives for examination upon request. The records shall show the information necessary to be included in the reports required by paragraph (b) of this section.

(b) Each such cigarette or tobacco products manufacturer described in paragraph (a) above shall deliver to the board by the 20th day of each calendar month a report in writing with respect to all releases and deliveries of cigarettes or tobacco products in this state and all shipments of cigarettes or tobacco products from a point outside this state to a point within this state made or authorized by ~~him~~ the manufacturer during the preceding calendar month. The releases, deliveries and shipments for each purchaser shall be grouped together in the report. The report shall be in a form prescribed by the board and shall show the following information with respect to each release, delivery or shipment:

- (1) the date of the release, delivery or shipment;
 - (2) the location from which the release, delivery or shipment was made;
 - (3) the name and address of the purchaser;
 - (4) the address of the place to which the cigarettes or tobacco products were shipped, released or consigned;
 - (5) the number of cigarettes or type, quantity and wholesale cost of tobacco products released, delivered or shipped;
 - (6) the invoice or document number and date thereof representing the release, delivery or shipment;
 - (7) if released to a licensed distributor, the license number of such distributor;
- and
- (8) in the case of a cancellation of any release, delivery or shipment, information indicating the transaction was cancelled.

The above information need not be supplied with respect to cigarettes or tobacco products which are non-tax-paid under the provisions of Chapter 52 of the Internal Revenue Act of 1954, as amended, and are released, delivered or shipped in internal revenue bond or customs control.

(c) In lieu of the monthly reports required by paragraph (b) of this section, a manufacturer may arrange with the board to supply the required information by supplying data processing media or other data in such manner and in such format as is satisfactory to the board.

History: Adopted June 24, 1959.

Amended September 13, 1961.

Amended November 3, 1967.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4028. PERIOD FOR WHICH RECORDS TO BE KEPT.

~~All records required by law or regulations to be kept by distributors and wholesalers shall be kept and preserved for a period of four years. During the four year period and at any time prior to actual destruction of records the board may give written notice to a distributor or wholesaler not to destroy records described in the notice. The records described in the notice shall be kept and preserved until the board gives written permission to the distributor or wholesaler for their destruction.~~

~~History: Adopted June 24, 1959.~~

~~Amended October 10, 1968, effective November 13, 1968.~~

DRAFT

Regulation 4034. REPORT OF SHIPMENTS TO CONSUMERS.

Reference: Sections 30453, 30454, Revenue and Taxation Code.

(a) Every person who sells or solicits orders for cigarettes the use or consumption of which is subject to the tax must file reports with the board as follows:

(1) If the person is engaged in business in this state and is required to be a licensed cigarette distributor, he or she shall report on the distributor's monthly report form prescribed by the board the number of cigarettes with respect to which he or she was required to collect the tax and such other information as is required on the report form. The report shall be filed on or before the 25th day of the calendar month following the calendar month in which the cigarettes were delivered in this state.

(2) If the person is engaged in business in this state and is required to be a registered cigarette distributor, he or she shall file a report or return with the board on or before the 25th day of the calendar month following the calendar month in which the cigarettes were delivered in this state showing:

(A) the name and address of each purchaser from whom an order was taken;

(B) the number of cigarettes sold and delivered pursuant to each order; and

(C) the amount of tax required to be collected from each purchaser.

(b) Every person who sells or solicits orders for tobacco products, the use or consumption of which is subject to the tax, must file reports or returns with the board as follows:

(1) If the person is engaged in business in this state and is required to be a licensed tobacco products distributor, he or she shall report on the tobacco products distributor's monthly tax return form prescribed by the board the wholesale cost of all tobacco products distributed to consumers and such other information as is required on the return. The return shall be filed on or before the 25th day of the calendar month following the calendar month in which the tobacco products were delivered in this state.

(2) If the person is engaged in business in this state and is required to be a registered tobacco products distributor, he or she shall file a report or return with the board on or before the 25th day of the calendar month following the calendar month in which the tobacco products were delivered in this state showing:

(A) the name and address of each purchaser from whom an order was taken;

(B) the type, quantity, and wholesale cost of tobacco products sold and delivered pursuant to each order; and

(C) the amount of tax required to be collected from each purchaser, together with a remittance of such tax.

~~(b)~~ Every person engaged in business in this state who, as permitted by state law or pursuant to the terms of the November 23, 1998 Master Settlement Agreements with the state which are applicable to the signatories to those Agreements, and makes making gifts of untaxed cigarettes or tobacco products as samples by means of shipment from an out-of-state point directly to a donee in this state shall ~~at the time of making the gift, or, if the donee is not then obligated to pay the tax, at the time the donee becomes so obligated,~~ collect the tax from the donee if the donee is other than a licensed distributor and shall give the donee a receipt showing the name and place of business of the donor, the name and address of the donee, the number of cigarettes donated, and the amount of tax

required to be collected, or the type, quantity and wholesale cost of the tobacco products donated and a statement indicating that the tobacco products tax has been paid.

Each package of ~~such~~ sample cigarettes shall have imprinted on it: “Not for Sale. Applicable state tax has been paid.” and each package of sample tobacco products shall be clearly marked as a sample.

Donors of sample cigarettes shall notify the board in writing in advance of the shipment of the cigarettes into the state giving information as to the approximate date or dates, location or locations, brand, ~~volume of the sample~~ and the method of shipment into the state. Each such donor shall file a report with the board on or before the 25th day of the calendar month following the calendar month in which the cigarettes were delivered in this state showing the number of cigarettes shipped into the state and the amount of tax required to be collected from each donee together with a remittance of such tax.

(ed) The taxes required to be collected constitute debts owed by the distributor, or other person required to collect the taxes, to this state.

(de) “Engaged in business in the state” means and includes any of the following:

- (1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.
- (2) Having any representative, agent, ~~salesman~~ person, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes.

(ef) The requirements of this regulation do not apply to those distributions of federally tax-free cigarettes or tobacco products to certain veteran’s institutions which distributions are exempt from tax under Section 30105.5 of the Revenue and Taxation Code.

History: Adopted June 24, 1959.

Amended January 12, 1968.

Amended October 10, 1968, effective November 13, 1968.

Amended April 11, 1972, effective May 14, 1972.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4041. COMMON CARRIER DELIVERY REPORTS.

Reference: Section 30186, Revenue and Taxation Code.

Every common carrier making a delivery of cigarettes or tobacco products to a consignee in this State, the shipment of which originated outside this State shall report to the board not later than the 25th day of the calendar month following the calendar month in which the delivery of the cigarettes or tobacco products was made, the following information concerning the shipment:

- (a) the name of the shipper and the point of origin;
- (b) the name of the consignee and the address to which delivered;
- (c) the date and number of the waybill covering the shipment;
- (d) the number of cases, bales or other containers of cigarettes or tobacco products delivered and the quantity of cigarettes or type, quantity, and wholesale cost of tobacco products contained therein as shown by the shipping documents; and
- (e) in the case of rail shipments, the car initials and number; and
- (f) in the case of water shipments, the name of the vessel and the number of the steamship bill of lading.

This report shall be made on a form prescribed by and filed with the board at ~~Sacramento~~.

History: Adopted June 24, 1959.

Amended October 10, 1968, effective November 13, 1968.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4047. TRANSFER OF STAMPS.

Reference: Section 30164, Revenue and Taxation Code.

Without prior written approval of the board, A distributor shall may not sell to, transfer to, or exchange with another distributor or any other person stamps issued by the board, and may . ~~A distributor shall not sell, transfer or distribute packages of cigarettes accompanied by unaffixed stamps.~~

History: Adopted June 24, 1959.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4055. WHERE PURCHASED; DISTRIBUTORS' DISCOUNT.

Reference: Section 30161, 30166, 30167,` Revenue and Taxation Code.

Cigarette tax stamps and meter register settings allowing the imprinting of meter impressions may be purchased by licensed distributors at ~~designated branch offices of banks located throughout the State. A list of the bank branch offices designated to sell stamps and set meter registers is available at offices of the board~~ locations designated by the Board. The tax stamps and meter register settings may be purchased for cash, and when authority has been granted in writing to a distributor, the tax indicia stamps and meter register settings may be purchased on a deferred payment basis. In either case, a discount as provided by law will be allowed to a licensed distributor.

History: Adopted September 13, 1961.
Amended January 12, 1968.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4056. UNITS OF SALE; MINIMUM SALES.

Reference: Section 30161, Revenue and Taxation Code

Heat-applied decal tax stamps of the denominated value of ~~1087¢~~ each are sold in rolls containing 30,000 stamps. Such stamps are sold in full rolls only and the smallest sale unit is one roll. Heat-applied decal tax stamp of the denominated value of 87¢ each are sold in sheets containing 150 stamps. The smallest sale unit of this type of stamp is one sheet. Heat-applied decal tax stamps for the denominated value of \$1.075 each are sold in rolls containing 7,200 stamps. Such stamps are sold in full rolls only and the smallest sale unit is one roll. Heat-applied decal tax stamps of the denominated value of 43.5¢ each are sold in sheets containing 100 stamps. The smallest sale unit for this type of stamp is one sheet. ~~Water-applied decal tax stamps of the denominated value of 10¢ each are sold in sheets containing 100 stamps. The sheets are contained in pads of 10 sheets. The smallest sale unit for this type of stamp is one pad of 10 sheets totaling 1000 stamps. Water-applied decal tax stamps of the denominated value of 5¢ each are sold in sheets containing 100 stamps. The smallest sale unit for this type of stamp is one sheet of 100 stamps.~~ The Board, at its discretion, may authorize the use of stamps of other denominated values and specifications. ~~Meter register settings are sold in multiples of 100 digits on a meter register. (One digit allows the imprinting of ten meter impressions of the denominated value of 10¢ per individual impression.) The minimum quantity of meter register digits sold in one transaction is 1000 digits set on a meter register.~~

History: Adopted September 13, 1961.

Amended January 12, 1968.

Amended June 22, 1983, effective October 6, 1983. Added sentence authorizing use of stamps of "other denominated values and specifications."

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4057. CASH SALES OF TAX ~~INDICIA~~ STAMPS OR METER REGISTER SETTINGS.

Reference: Section 30161, Revenue and Taxation Code.

Every distributor desiring to purchase tax stamps or meter register settings for cash shall file a "Cigarette Tax Signature Card" on a form approved by the board, with the designated location ~~bank branch office where he or she will make his or her cash purchases of the tax indicia stamps or meter register settings.~~ Orders for stamps or meter register ~~digits settings to be set~~ shall be made by the distributor to such ~~bank branch office~~ designated location on order forms approved by the board. Payment must be made for cash purchases at the time the stamps or meter register settings are received. ~~or the meter is set and sealed. The State requires the bank to make an immediate deposit into the State Treasury for cash purchases and the bank is not permitted to extend credit therefor on behalf of the State.~~ The designated location ~~bank~~ may require cash, or certified or cashier's checks in payment of such purchases.

History: Adopted September 13, 1961.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4058. APPLICATION FOR CREDIT PURCHASES.

Reference: Sections 30142, 30167, Revenue and Taxation Code.

Every distributor desiring to purchase tax stamps or meter register settings on the deferred payment basis shall request the board to set the maximum amount of such purchases the distributor may have unpaid at any time and the amount of the required bond security.

The board shall set the amounts and ~~send~~notify the distributor ~~form BT-353 by mail showing~~of the maximum amount of deferred payment purchases that the distributor may have unpaid at any time and the amount of the required bond security. The maximum amount of ~~deferred payment purchases for which the distributor may defer payment as determined by the board shall be set by the board at not to exceed twice one and one-half times the distributor's average monthly tax liability, based on the distributor's previous six months' experience, or in the case of a distributor not previously authorized to make deferred payment purchases or a distributor the character of whose business has changed substantially, the maximum amount shall not exceed twice be set at one and one-half times the estimated average monthly tax liability as determined by the board.~~

~~The distributor shall indicate on the form the location of the designated bank branch office where the purchases will be made, sign the form and send it to the board in Sacramento. If the distributor wishes to make credit purchases at more than one location, the distributor shall file a form BT-353 for each location, but may file one bond covering all locations. The distributor shall provide to the board Aa surety bond or deposit in lieu of security shall accompany the application and shall be in an amount equal to not less than 70 percent of the total maximum amount, or more than twice the amount of deferred payment purchases the distributor may have unpaid at any time as determined by the board.~~

History: Adopted September 13, 1961.

Amended January 12, 1968.

Amended October 25, 1972, effective November 30, 1972.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4059. AUTHORIZATION FOR CREDIT PURCHASES.

Reference: Sections 30167, 30169, Revenue and Taxation Code.

(a) Upon ~~receipt of the completed application~~ approval of a distributor's request to purchase tax stamps or meter register settings on the deferred payment basis, and receipt of the required security, the board shall give written authorization for the amount of deferred payment purchases the distributor may have unpaid at any time to the distributor and the ~~bank branch designated location~~ where such purchases are to be made.

(b) Before making deferred payment purchases of tax ~~indicia, stamps and meter register settings~~, the distributor shall file a "Cigarette Tax Signature Card" on a form approved by the board with each designated ~~bank branch office~~ location where ~~he~~ the distributor will make his credit purchases. The distributor shall authorize in writing on the card those persons who may order purchases of stamps or meter register settings for ~~his~~ this distributor's account at each designated ~~bank branch office~~ location. The distributor's authorization of such persons shall continue in effect until written notice of revocation of the authority is delivered to the ~~bank branch office~~ designated location by registered or certified mail or until written acknowledgement of receipt of the revocation is given by the bank branch office to the distributor.

(c) Orders for stamps or meter register ~~digits to be set~~ settings shall be made by the distributor to the ~~bank branch offices~~ designated location on order forms approved by the board.

History: Adopted September 13, 1961.
Amended January 12, 1968.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4060. PAYMENT FOR CREDIT PURCHASES.

Reference: Section 30161, 30168, Revenue and Taxation Code.

Payment for all deferred payment purchases of tax ~~indicia~~stamps or meter register settings made during each calendar month must be made at the ~~bank—branch office~~designated location where the purchases were made, and must be made by the 25th day of the calendar month following the month in which the purchases were made. Remittance for such purchases shall be made payable to “State Board of Equalization.” The privilege of making deferred payment purchases shall be suspended as long as a delinquent balance is owing therefor.

History: Adopted September 13, 1961.

Amended January 12, 1968.

Amended October 10, 1968, effective November 13, 1968.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4062. DESTROYED STAMPS AND METERS.

Reference: Sections 30177, Revenue and Taxation Code.

The board will refund or credit to a distributor the denominated value, less the purchase discount, of any stamps, or unused meter register settings, ~~remaining on a meter~~, when the stamps or the meter have been destroyed by fire, flood or other casualty prior to the affixation of the ~~tax indicia~~ stamps or meter impressions to packages of cigarettes. The distributor must establish by clear and convincing evidence that the stamps or meter were destroyed by fire, flood or other casualty and the denominated value of the stamps or remaining meter register balance. Theft or ~~mysterious~~ mysterious disappearance of unaffixed stamps or of a meter shall not constitute a casualty for which refund or credit will be given.

History: Adopted January 12, 1968.

Former Regulation 4062 amended and renumbered 4065 January 12, 1968.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4063. DESTROYED CIGARETTES.

Reference: Section 30177, Revenue and Taxation Code.

The board will refund or credit to a distributor the denominated value, less the purchase discount, of stamps or meter impressions affixed to packages of cigarettes which have been destroyed by fire, flood or other casualty, prior to distribution. The distributor must establish by clear and convincing evidence that the cigarettes were destroyed by fire, flood or other casualty prior to distribution and the denominated value of the affixed ~~indicia~~tax stamps or meter impressions. The theft or mysterious disappearance of packages of cigarettes shall not constitute a casualty for which refund or credit will be given.

History: Adopted June 24, 1959.

Amended August 3, 1960.

Amended September 13, 1961.

Amended January 12, 1968.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4063.5 EXPORTED TAX-PAID TOBACCO PRODUCTS

Reference: Sections 30176.1, 30178.1, 30178.2, 30179.1, Revenue and Taxation Code.

The board will refund or credit to a distributor the tax paid on tobacco products which are:

- (a) Shipped to a point outside this state, pursuant to a contract of sale, by delivery by the distributor to such point by means of:
 - (1) facilities operated by the distributor;
 - (2) delivery by the distributor to a carrier for shipment to a consignee at such point, or
 - (3) delivery by the distributor to a customs broker or forwarding agent for shipment outside this state.
- (b) Sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the cigarettes or tobacco products abroad and actually carried to a foreign destination.
- (c) Sold for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States.

The distributor must provide bills of lading or other documentary evidence of the delivery of the tobacco products to a carrier, customs broker or forwarding agent for shipments outside this state. This evidence must be retained by the distributor for inspection by employees of the board. In the case of tobacco products for foreign export, copies of United States Customs shipper's export declarations filed with the Collector for Customs or other documentary evidence of export must be obtained and retained. No refund or credit will be given if the tobacco products are diverted in transit or for any reason are not actually delivered outside the state pursuant to the contract of sale or are not shipped aboard by a foreign purchaser. Any application for refund or credit based upon the exportation of tax-paid tobacco products from this state shall be filed with the board within three months after the close of the calendar month in which the tobacco products are exported.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4064. CLAIM FORMS.

Reference: Section 30110, Revenue and Taxation Code.

A claim for refund or credit made pursuant to Regulations 4061, 4062 or 4063 or 4063.5 must be made on a form prescribed by and filed with the board.

History: Adopted January 12, 1968.
Former Regulation 4064 renumbered 4067 January 12, 1968.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4065. UNUSABLE CIGARETTES.

Reference: Section 30177, Revenue and Taxation Code.

The board will refund or credit to a distributor the denominated value, less the purchase discount, of identifiable stamps or meter impressions affixed to packages of cigarettes which have become unfit for use or unsalable before distribution, or after distribution if the cigarettes have been returned for credit or have been replaced and proof is submitted to the board showing that the cigarettes have not been used for smoking in California. Claim for refund or credit must be made on a form prescribed by the board and shall be accompanied by a properly executed receipt and a copy of the credit memorandum of the manufacturer for returned stock, or by proof of destruction of the cigarettes with the ~~tax indicia~~ stamps or meter impressions thereon in the presence of an employee of the board authorized to witness the destruction.

History: Adopted June 24, 1959.

Formerly Regulation 4062 amended and renumbered 4065 January 12, 1968.

Authority: Section 30451, Revenue and Taxation Code.

DRAFT

Regulation 4067. PROVISIONS LIMITED TO DISTRIBUTORS.

Reference: Sections 30176, 30177, Revenue and Taxation Code.

~~The refund and credit provisions of Sections 30176 and 30177 of the Cigarette Tax Law apply only to distributors. Refunds and credits for unused stamps, and meter impressions and for stamps or meter impressions affixed to packages of cigarettes which have become unfit for use, unsalable or destroyed may not be made by the board to dealers or others.~~

History: Adopted June 24, 1959.

Amended September 13, 1961.

Formerly Regulation 4064 renumbered 4067 January 12, 1968.

DRAFT

~~Regulation 4079. IN BOND FEDERAL TAX-FREE CIGARETTES.~~

~~Reference: Article 1, Section 8, Clause 3, United States Constitution.~~

~~The tax does not apply to sales of cigarettes where all three of the following conditions exist:~~

- ~~(a) The cigarettes sold are exempt from the Federal tax on cigarettes under the provisions of Chapter 52 of the Internal Revenue Act of 1954; and~~
- ~~(b) The cigarettes are under the Federal bond required to secure their exemption from the Federal tax and are to leave the State under Federal Customs control; and~~
- ~~(c) The cigarettes are sold for shipment to foreign countries or for use as ship's supplies which are to be consumed or resold on the high seas or in foreign countries.~~

~~History: Adopted June 24, 1959.~~

~~Amended August 3, 1960.~~

DRAFT

Regulation 4080. INTERSTATE AND FOREIGN COMMERCE.

Reference: Section 30108, Revenue and Taxation Code.

The tax does not apply to sales of cigarettes or tobacco products which are: (a) Shipped to a point outside this State, pursuant to a contract of sale, by delivery by the seller to such point by means of:

- (1) facilities operated by the seller;
 - (2) delivery by the seller to a carrier for shipment to a consignee at such point, or
 - (3) delivery by the seller to a customs broker or forwarding agent for shipment outside this State.
- (b) Sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the cigarettes or tobacco products abroad and actually carried to a foreign destination.
- (d) Sold for use solely outside this State and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States.

Bills of lading or other documentary evidence of the delivery of the cigarettes or tobacco products to a carrier, customs broker or forwarding agent for shipments outside the State must be retained by the distributor for inspection by employees of the board. In the case of cigarettes or tobacco products for foreign export, copies of United States Customs shippers' export declarations filed with the Collector of Customs or other documentary evidence of export must be obtained and retained. The tax applies to the transaction if the cigarettes or tobacco products are diverted in transit or for any reason are not actually delivered outside the State pursuant to the contract of sale or are not shipped abroad by a foreign purchaser, regardless of documentary evidence held by the distributor.

History: Adopted June 24, 1959.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4081. SAMPLE CIGARETTES AND TOBACCO PRODUCTS.

Reference: Sections 30005, 30008, 30009, 30105, Revenue and Taxation Code.

The giving away in this state of untaxed cigarettes or tobacco products as samples is a taxable distribution.

Manufacturers' agents or representatives may for advertising purposes, as permitted by state law or pursuant to the terms of the November 23, 1998 Master Settlement Agreements with the state which are applicable to the signatories to those Agreements, distribute to consumers packages of cigarettes without stamps or meter impressions affixed to the packages or untaxed tobacco products. However, the manufacturer giving away such sample cigarettes or tobacco products must report the distribution on its monthly report or return and pay the tax due. Each package of such samples cigarettes shall have imprinted on it: "Not for Sale. Applicable state tax has been paid." and each package of sample tobacco products shall be clearly marked as sample.

Cigarette manufacturers shall notify the board in writing in advance of the sampling, giving information as to the approximate date or dates, location or locations, brand, ~~volume~~ and method of distribution.

History: Adopted September 13, 1961.

Amended January 12, 1968.

Amended April 11, 1972, effective May 14, 1972.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4082. CIGARETTES FOR HOSPITALIZED VETERANS.

Reference: Sections 30102.5, 30105.5, Revenue and Taxation Code.

~~Cigarettes upon which the United States government imposes no tax may be purchased by private persons directly from the manufacturer without the California cigarette tax being imposed, if as a part of the transaction the cigarettes are given to the Veterans Home of California at Yountville, California, or to a hospital or domiciliary facility of the United States Veterans Administration for gratuitous issue to the veterans receiving hospitalization or domiciliary care, and arrangements are made with the manufacturer that delivery of the cigarettes is made directly from the manufacturer to the institution under Internal Revenue control.~~

History: Adopted September 13, 1961, effective September 15, 1961.

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Regulation 4091. PAYMENT BY CONSUMER.

Reference: Sections 30005, 30106, 30107, 30108, Revenue and Taxation Code.

- (a) Each consumer or user of cigarettes or tobacco products subject to the tax, resulting from the consumer ~~his~~ having:
- (1) purchased cigarettes or tobacco products in any quantity, when such ~~which~~ cigarettes or tobacco products are shipped to ~~him~~ the consumer from out of state,
 - (2) ~~his having personally himself~~ transported or brought into the state untaxed cigarettes in quantities of more than 400 cigarettes in a single lot for his or her own use or consumption, or
 - (3) ~~having~~ obtained more than 400 untaxed cigarettes at one time from a federal instrumentality listed in Revenue and Taxation Code Section 30102 ~~of the Cigarette Tax Law~~, must pay the tax: ~~(a)~~ either to the licensed or registered distributor under the Cigarette and Tobacco Products Tax Law from whom the cigarettes or tobacco products were purchased, or ~~(b)~~ directly to the board if the person from whom the cigarettes or tobacco products were purchased is not a licensed or registered distributor.
- (b) Consumers or users will be liable for payment of the tax to the board unless receipts as provided by Regulation 4092 are obtained for payment of the tax to the distributor.

History: Adopted June 24, 1959.

Amended September 13, 1961.

Amended October 10, 1968, effective November 13, 1968.

Amended November 5, 1970, effective December 10, 1970.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4092. RECEIPTS FOR TAX PAID TO DISTRIBUTORS.

Reference: Section 3018, Revenue and Taxation Code.

Every distributor required to collect the tax under Revenue and Taxation Section 30108 ~~of the Cigarette Tax Law~~ must give a receipt to each purchaser for the amount of tax collected. The receipt need not be in any particular form but must show the following:

- (a) the name and place of business of the distributor making the sale or accepting the order for cigarettes or tobacco products;
- (b) the license number or registration number of the distributor;
- (c) the name and address of the purchaser;
- (d) the number of cigarettes or type, quantity, and wholesale cost of all tobacco products purchased;
- (e) the date the cigarettes or tobacco products were purchased; and
- (f) the amount of tax collected by the distributor or statement indicating that the tobacco products tax has been paid.

A sales invoice containing the data required above, together with evidence of payment thereof, will constitute a receipt.

History: Adopted June 24, 1959.

Authority: Section 30451, Revenue and Taxation Code.

Regulation 4098. RELIEF FROM LIABILITY.

Reference: Section 30284, Revenue and Taxation Code.

(a) IN GENERAL A person may be relieved from the liability for the payment of cigarette and tobacco products taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

- (1) Written advice given by the board under the conditions set forth in subdivision (b) below,
or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question.

For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advise from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

- 1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above;
or
- 2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advise on behalf of its member(s) must identify and include the specific member names(s) for whom the advice is requested for relief from liability under this regulation.

Authority: Section 30451, Revenue and Taxation Code.